IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 360 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAVAL RAMA DAHYA

Appearance:

Mr. N.D. Gohil, APP, for the Petitioner

None for the Respondents

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 15/12/2000

ORAL JUDGEMENT

1. This is an appeal filed by the State against order of acquittal dated 8/2/1990 passed by the Judicial Magistrate (1st Class), Radhanpur for the alleged offence under sections 147, 148, 323, 324, 326 and 149 of Indian

Penal Code. Though in the cause title, 13 respondents are mentioned, however, for the purpose of the present appeal, we are concerned only with respondents nos. 5, 6, 7, 8, 9 and 11, 12 and 13, namely, Raval Dasharath Mana, Raval Chatur Mana, Raval Dhama Mohan, Raval Bhagwan Dhama, Raval Dahya Ruda, Jatanben w/o Raychand Raval, Jadiben w/o Dahya Raval and Hatiben D. Raval as they have been acquitted. In so far as respondents nos. 1 to 4 and 10 are concerned, the Trial Court has already held them guilty and sentenced vide the same order.

2. The case of the prosecution in nutshell is that on 21st February, 1987, the complainant, Ajabhai Cheharbhai along with his father, Cheharbhai Lagdhirbhai, younger brother, Raghabhai, and sister, Maliben, went to their fields for carrying out agricultural operations. That at around 5.00 p.m. in the evening, when they were all returning along with their buffaloes to their house, at the place named Khara Wagha, accused nos. 1 to 3, 5 to 8 and 10 had come. That they were armed with sticks, barchhi, dharia and axe. The accused started quarrelling stating that the buffaloes belonging to the complainant and his family had entered the fields of the accused and damaged the crop and hence, their buffaloes were required to be put in cattle pound. The father of the complainant, Cheharbhai, replied that the buffaloes were in their own fields and were tied down and they were fed in the field itself. On hearing this reply, accused no.2 became infuriated and started giving blows to Cheharbhai. Thereafter, it is the case of the prosecution that accused no.3 as well as 4 also started giving blows with Barchhi and dharia respectively, and when Raghubhai and Maliben tried to intervene they were also inflicted blows. It is then stated that, at this time, accused nos. 9, 11, 12 and 13 reached there and they also started shouting, causing further provocation and beating the complainant and his family members.

3. The complainant, thus, lodged First Information Report No. 20 of 1987 and necessary Panchnama was drawn as well as the offending weapons were seized by the police. After making necessary enquiries and obtaining medical certificate regarding the injuries, the accused were arrested and a charge-sheet was framed against them. All the accused pleaded to be not guilty of the offences for which they were charge-sheeted and hence, they were tried.

4. The following issues were framed :

a) Is the prosecution able to prove the charge of

offence under sections 147, 148, 323, 324, 325, 326 and 149 of Indian Penal Code against the accused ?

b) What order ?

The answers to the issues are :

a) That accused no.1 to 4 and accused no. 10 have committed offence punishable under section-147 of Indian Penal Code.

b) As per final order.

5. After taking into consideration the evidence on record in the form of FIR, Panchnama, medical certificate and deposition of various witnesses, the Trial Court has come to the conclusion that the prosecution has been able to establish its case beyond reasonable doubt in relation to accused nos. 1 to 4 and accused no.10. However, in so far as the remaining accused persons are concerned, namely, accused nos. 5 to 9 and 11 to 13, the Trial Court has come to the conclusion that there is reasonable doubt as to the presence of the said persons at the time of the incident in question and in light of the same, it has been held that no offence has been proved to have been committed by accused nos. 5 to 9 and 11 to 13 and they have been set free.

6. The learned APP, Shri Gohil, took us through the judgement of the Trial Court as well as evidence on record. However, after taking into consideration the depositions of the complainant, his younger brother, Raghu Chehar, his father, Chehar Lagdhirbhai, the Trial Court has come to the conclusion that accused no.9 has not been named in the complaint lodged with the police; accused nos. 7 and 8 have not been named by the father of the complainant; accused nos. 5 and 6 have not been named by witness, Raghu Chehar, i.e. the younger brother of the complainant. In view of these circumstances, the Trial Court has come to the conclusion that the presence of accused nos. 5, 6, 7 and 8 is doubtful at the time and place of incident, while accused nos. 9 and 11 to 13 seem to have been wrongly involved in the incident as their presence is also doubtful. Thus, taking an overall view of the evidence on record, the Trial Court has acquitted the said persons, namely, original accused nos. 5 to 9 and 11 to 13, being Raval Dasharath Mana, Raval Chatur Mana, Raval Dhama Mohan, Raval Bhagwan Dhama, Raval Dahya Ruda, Jatanben w/o Raychand Raval, Jadiben w/o Dahya Raval and Hatiben D. Raval respectively.

Nothing further has been brought on record nor anything has been shown from the record, which has not been taken into consideration by the Trial Court and hence, the order of acquittal does not require any interference in relation to the aforesaid persons. The appeal is, accordingly, dismissed. Record and proceedings be returned.

[D. A. Mehta, J.]

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